



DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Metlakatla Indian Community, Annette Islands Reserve; Alcohol Control

Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Alcohol Control Ordinance of the Metlakatla Indian Community, Annette Islands Reserve. The Alcohol Control Ordinance is to regulate and control the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Alaska for the purpose of generating new Tribal revenues. Enactment of this statute will help provide a source of revenue to strengthen Tribal government, provide for the economic viability of Tribal enterprises, and improve delivery of Tribal government services.

DATES: This code shall become effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, Oregon 97232, Telephone: (503) 231-6702, Fax: (503) 231-2201.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Pub. Law 83–277, 67 stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the *Federal Register* notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Metlakatla Indian Community Council duly adopted the Metlakatla Indian Community, Annette Islands Reserve Alcohol Control Ordinance via Resolution 21-57 on November 23, 2021.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Metlakatla Indian Community Council duly adopted by Resolution the Metlakatla Indian Community, Annette Islands Reserve Alcohol Control Ordinance by Resolution No. 21-57 dated November 23, 2021.

Bryan Newland,
Assistant Secretary–Indian Affairs.

TITLE FOUR CIVIL CODE

CHAPTER 12

ALCOHOL CONTROL ORDINANCE

SECTION FOUR.12.1 TITLE.

This Ordinance shall be known as the Metlakatla Indian Community Alcohol Control Ordinance. This Ordinance may be referred to as the "Alcohol Control Ordinance."

SECTION FOUR.12.2 PURPOSE AND AUTHORITY.

A. The purpose of this Ordinance is to regulate and control the possession and sale of alcohol within the Community's territory, as specifically authorized and approved by Tribal Council resolution under Article IV, Section 1 of the Metlakatla Indian Community's Constitution. The authority for enactment of this Ordinance is as follows:

1. The Act of August 15, 1953, (Public Law 83-277, 67 Stat. 586, codified at 18 USC § 1161), which provides a federal statutory basis for the Community to regulate the activities of the manufacture, distribution, sale and consumption of alcohol on Indian lands under the jurisdiction of the Community, so long as such ordinance is in conformance with the laws of the State of Alaska; and

2. Article IV, Section 1 of the Constitution of the Metlakatla Indian Community, which vests the Tribal Council with legislative and administrative authority, and otherwise empowers the Tribal Council to act for the Community.

SECTION FOUR.12.3 DEFINITIONS.

A. As used in this Ordinance, the following words or phrases shall have the following meaning unless the context clearly requires otherwise:

1. "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

2. "Alcoholic Beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by the person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially.

3. "Bar" means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of alcohol, as herein defined.

4. "Bottling" means to put into a bottle, can, or other container.

5. "Alcohol Control Committee" for the purposes of this Ordinance shall mean the Tribal Council of Metlakatla.

6. "Community" means Metlakatla Indian Community.

7. "Liquor" is synonymous with the term "Alcoholic Beverage."

8. "Liquor Store" means any store at which liquor is sold, and for the purposes of this Ordinance, includes a store at which only a portion of which is devoted to the sale of liquor, wine or beer.

9. "Minor" means any person under the age of 21.

10. "Package" means any container or receptacle used for holding alcoholic beverages.

11. "Public Place" includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment

centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has right of access, and which are generally used by the public. For the purposes of this Ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

12. "Reserve" means the Annette Islands Reserve, which is held in trust by the United States Government for the benefit of the Community; any land located within the exterior boundaries of said reserve; and any lands held in trust by the United States for the benefit of the Community or held in trust for the benefit of an individual member of the Community.

13. "Sale" and "Sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of alcohol, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

14. "Tribal Council" means the Metlakatla Indian Community Tribal Council.

B. So long as the definitions are consistent with tribal or federal law, the terms used in this ordinance shall have the same meaning as defined in Title 4, Alaska Statutes, Chapter 21, and as defined in Title 3, Alaska Administrative Code, Chapter 304.

C. References in this Ordinance to federal and Alaska state law shall be those laws and regulations in effect as of March 7, 2017. Subsequent changes in those laws and regulations shall be considered incorporated into this Ordinance and effective unless the Community or the Tribal Council amends this Ordinance.

SECTION FOUR.12.4 CONFORMITY TO STATE LAW.

A. Jurisdiction. The Community will retain sole and exclusive jurisdiction over the enforcement of this ordinance. All disputes under this ordinance shall be heard by the tribal court.

B. Statement of Objection. The Community does not agree with the alleged authority of the United States or the State of Alaska to interfere with the Community's sovereign authority to regulate and control of alcohol sales and possession within the Community's sovereign boundaries. Accordingly, nothing in this Ordinance shall be interpreted as waiving the Community's right and power to challenge such authority in any judicial forum of competent jurisdiction, or by use of the political process. This Ordinance shall conform with the laws of the State of Alaska as required by 18 U.S.C. §1161, and *Rice v. Rehner*, 463 U.S. 713 (1983).

C. Conformity to State Law. The Metlakatla Indian Community agrees to perform in the sale and possession of alcohol in the same manner as any other Alaska business entity for the purpose of alcohol licensing and regulations, including but not limited to licensing, compliance with the regulations of the Alaska State Alcoholic Beverage Control Board, and other applicable subjects as the State may address by statute or regulation from time to time. Upon final approval of this Ordinance the Alcohol Control Committee shall receive a briefing on Alaska State Alcoholic Beverage laws and regulations, and shall receive an update brief no fewer than once per year.

SECTION FOUR.12.5 CREATION AND POWERS.

A. The Tribal Council of Metlakatla is hereby designated as the "Alcohol Control Committee" in order to administer and enforce the provisions of this ordinance.

B. The Alcohol Control Committee, in furtherance of the Ordinance, shall have the following powers and duties, or may delegate such duties by resolution:

1. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Reserve;
2. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Alcohol Control Committee to perform its functions. Such employees shall be tribal employees;
3. To issue licenses permitting the sale, manufacture or distribution of alcohol on the Community's Reserve;
4. To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;
5. To bring suit in the tribal court to enforce this Ordinance as necessary;
6. To determine and seek damages for violation of this Ordinance;
7. To make such reports as may be required;
8. To collect taxes and fees levied or set by the Alcohol Control Committee, and to keep accurate records, books and accounts; and
9. To exercise such other powers as are necessary and appropriate to fulfill the purposes of this Ordinance.

C. The Alcohol Control Committee shall have the authority to authorize the sale of alcohol only on those areas of the Community's Reserve that have been specifically approved by the Tribal Council, by resolution, and under such conditions as may be included in said resolution.

SECTION FOUR.12.6 LIMITATION ON POWERS.

In the exercise of its powers and duties under this Ordinance, the Alcohol Control Committee and its individual members shall not accept any gratuity, compensation or other thing of value from any alcohol wholesaler, retailer, or distributor or from any licensee.

SECTION FOUR.12.7 INSPECTION RIGHTS.

The premises on which alcohol is sold or distributed shall be open for inspection by the Alcohol Control Committee at all reasonable times for the purposes of ascertaining whether the rules and regulations of this Ordinance are being complied with.

SECTION FOUR.12.8 LICENSE REQUIRED.

Sales of alcohol and alcoholic beverages on lands within the Community's jurisdiction may only be made at businesses which hold a Tribal Alcohol License.

SECTION FOUR.12.9 SALES FOR CASH.

All alcohol sales within the Reserve boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards.

SECTION FOUR.12.10 SALES FOR PERSONAL CONSUMPTION.

All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Reserve is prohibited. Any person who is not licensed according to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reserve and sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to paying damages to the Community as set forth herein.

SECTION FOUR.12.11 REQUIREMENTS FOR APPLICATION FOR TRIBAL ALCOHOL LICENSE.

A. No individual tribal license shall issue under this Ordinance except upon a sworn application filed with the Alcohol Control Committee containing a full and complete showing of the following:

1. Satisfactory proof that the applicant is or will be duly licensed by the State of Alaska.
2. Satisfactory proof that the applicant is of good character and reputation among the people of the Reserve and that the applicant is financially responsible.
3. The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license.
4. Agreement by the applicant to accept and abide by all conditions of the tribal license.
5. Payment of a license fee as prescribed by the Alcohol Control Committee.
6. Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.
7. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least thirty (30) days prior to consideration by the Alcohol Control Committee and has been published at least twice in such local newspaper serving the community that may be affected by the license. The notice shall state the date, time, and place when the application shall be considered by the Alcohol Control Committee according to Section Four.12.12 of this Ordinance.

SECTION FOUR.12.12 HEARING ON APPLICATION FOR TRIBAL ALCOHOL LICENSE.

A. All applications for a tribal alcohol license shall be considered by the Alcohol Control Committee in open session at which the applicant, his/her attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Alcohol Control Committee, by secret ballot, shall determine whether to grant or deny the application based on:

1. Whether the requirements of SECTION FOUR.12.11 have been met; and
2. Whether the Alcohol Control Committee, in its discretion, determines that granting the license is in the best interest of the Community.

In the event that the applicant is a member of the Tribal Council, or a member of the immediate family of a Tribal Council member, such member shall not vote on the application or participate in the hearings as a Alcohol Control Committee member.

SECTION FOUR.12.13 TEMPORARY PERMITS.

The Alcohol Control Committee or its designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed three (3) days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in SECTION FOUR.12.13 of this Ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee, as set by the Alcohol Control Committee, will be assessed on temporary permits.

SECTION FOUR.12.14 CONDITIONS OF TRIBAL LICENSE.

A. Any tribal license issued under this Ordinance shall be subject to such reasonable conditions as the Alcohol Control Committee shall fix, including, but not limited to the following:

1. The license shall be for a term not to exceed 2 years;
2. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises;
3. The licensed premises shall be subject to patrol by the tribal police department, and such other law enforcement officials as may be authorized under applicable law;
4. The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours;
5. Subject to the provisions of subsection (7) to this section, no intoxicating beverages shall be sold, served, disposed of, delivered or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of Alaska, and in accordance with the hours fixed by the Alcohol Control Committee, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of Alaska.
6. No alcohol shall be sold within 200 feet of a polling place on tribal election days, when a referendum is held of the people of the Community, and including special days of observance as designated by the Alcohol Control Committee.
7. All acts and transactions under authority of the tribal alcohol license shall be in conformity with the laws of the State of Alaska, as required by federal law, and shall be in accordance with this ordinance and any tribal license issued according to this Ordinance.

8. No person under the age permitted under the laws of the State of Alaska shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.

9. There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

SECTION FOUR.12.15 LICENSE NOT A PROPERTY RIGHT.

Notwithstanding any other provision of this ordinance, a tribal alcohol license is a mere permit for a fixed duration of time. A tribal alcohol license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal alcohol license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

SECTION FOUR.12.16 ASSIGNMENT OR TRANSFER.

No tribal license issued under this Ordinance shall be assigned or transferred without the written approval of the Alcohol Control Committee expressed by formal resolution.

SECTION FOUR.12.17 SALE OR POSSESSION WITH INTENT TO SELL WITHOUT A LICENSE.

Any offense of Title One, Section 1.55 LIQUOR POSSESSION FOR SALE shall also be considered a violation under this Ordinance.

SECTION FOUR.12.18 PURCHASE FROM OTHER THAN LICENSED FACILITIES.

Any person within the boundaries of the Reserve who buys alcohol from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.19 SALES TO PERSONS UNDER THE INFLUENCE OF ALCOHOL.

Any person who sells alcohol to a person apparently under the influence of alcohol shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.20 CONSUMING ALCOHOL IN PUBLIC CONVEYANCE.

Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person who shall knowingly permit any person to drink any alcoholic beverages in any public conveyance shall be guilty of a violation of this Ordinance. Any person who shall drink any alcoholic beverage in a public conveyance shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.21 CONSUMPTION OR POSSESSION OF ALCOHOL BY MINORS.

The possession of alcohol by any minor is prohibited by Section 1.56b of the Criminal Law & Procedure Code. Any offense committed under Section 1.56b shall also constitute a violation of this Ordinance.

SECTION FOUR.12.22 SALE OF ALCOHOL TO MINORS.

The sale of alcohol to any minor is prohibited by Section 1.49a of the Criminal Law & Procedure Code. Any offense committed under Section 1.49a shall also constitute a violation of this Ordinance.

SECTION FOUR.12.23 TRANSFER OF IDENTIFICATION TO MINOR.

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcohol shall be guilty of an offense;

provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.

SECTION FOUR.12.24 USE OF FALSE OR ALTERED IDENTIFICATION.

Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this Ordinance.

SECTION FOUR.12.25 VIOLATION OF THIS ORDINANCE.

A. The Metlakatla Police Department shall notify the Alcohol Control Committee in writing of any suspected violations of this Ordinance. Upon the request of the Alcohol Control Committee, the Metlakatla Police Department shall appear at the time and place specified for a hearing under subsection B to present the evidence against accused.

B. Any person accused of violating this ordinance shall be entitled to a hearing before the Alcohol Control Committee after 10 days' written notice. The notice must specify the facts underlying the allegation and the specific provision of the Ordinance the person is accused of violating. The accused shall be entitled to the Basic Rights included in Title 1, Chapter 2, Section 2.3, with the exception of a right to trial by an impartial jury. The accused shall be found guilty upon a two-third vote of the members of the Alcohol Control Committee present at the hearing. Any person guilty of a violation of this Ordinance by the Alcohol Control Committee shall be liable to pay the Community a penalty not to exceed \$500 per violation as civil damages to defray the Community's cost of enforcement of this Ordinance.

C. In addition to any penalties so imposed, any license issued hereunder may be suspended or canceled by the Alcohol Control Committee for the violation of any of the provisions of this Ordinance, or of the tribal license, upon hearing before the Alcohol

Control Committee after 10 days' notice to the licensee. The decision of the Alcohol Control Committee shall be final.

D. A licensee that loses any license granted under this Chapter pursuant to Section Four.12.25(B) may reapply for a license according to the terms of this chapter after a period of six (6) months.

SECTION FOUR.12.26 ACCEPTABLE IDENTIFICATION.

A. Where there may be a question of a person's right to purchase alcohol by reason of his/her age, such person shall be required to present any one of the following issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

1. Driver's license of any state or identification card issued by any State Department of Motor Vehicles;
2. United States Active Duty Military Identification;
3. Passport.

SECTION FOUR.12.27 POSSESSION OF ALCOHOL CONTRARY TO THIS ORDINANCE.

Alcoholic beverages which are possessed contrary to the terms of this Ordinance are declared to be contraband. Alcoholic beverages declared contraband shall be subject to seizure under Title IV, Chapter 6 of the Civil Code.

SECTION FOUR.12.28 SALES TAX.

The Alcohol Control Committee shall have the authority, by regulation, to levy and collect a sales tax on each sale of alcoholic beverages on the Reserve. The amount of

such tax shall be set by resolution, shall include credit card payments, and shall include all retail sales of alcohol on the Reserve.

SECTION FOUR.12.29 PAYMENT OF TAXES TO COMMUNITY.

All taxes from the sale of alcoholic beverages on the Reserve shall be paid over to the Secretary of the Community.

SECTION FOUR.12.30 TAXES DUE.

All taxes for the sale of alcoholic beverages on the Reserve are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

SECTION FOUR.12.31 REPORTS.

Along with payment of the taxes imposed herein, the taxpayers shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

SECTION FOUR.12.32 AUDIT.

As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reserve. Said review or audit may be done annually by the Community through its agents or employees whenever, in the opinion of the Alcohol Control Committee, such a review or audit is necessary to verify the accuracy of reports.

SECTION FOUR.12.33 DISPOSITION OF PROCEEDS.

A. The gross proceeds collected by the Alcohol Control Committee from all licensing and provided from the taxation of the sales of alcoholic beverages on the Reserve shall be distributed as follows:

1. For the payment of all necessary personnel, administrative costs, and legal fees for the operation of the Alcohol Control Committee and its activities.
2. The remainder shall be turned over the account of the Community.

SECTION FOUR.12.34 SEVERABILITY.

If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

SECTION FOUR.12.35 PRIOR ENACTMENTS.

All prior enactments of the Tribal Council that are inconsistent with the provisions of this Ordinance are hereby rescinded.

SECTION FOUR.12.36 CONFORMANCE WITH STATE OF ALASKA LAWS.

All acts and transactions under this Ordinance shall be in conformity with the laws of the State of Alaska as that term is used in 18 U.S.C. §1161.

SECTION FOUR.12.37 EFFECTIVE DATE.

This Ordinance shall be effective as of the date of publication in the Federal Register.

SECTION FOUR.12.38 AMENDMENT.

This Ordinance may only be amended or repealed by a majority vote of the Tribal Council. The authorized areas of the Community's Reserve where alcohol may be sold

may only be amended or repealed by the Tribal Council. No amendment or modification of the regulation by the Community of the sale and possession of alcohol is effective until approved by the Secretary of the Interior and published in the Federal Register.

SECTION FOUR.12.39 SOVEREIGN IMMUNITY.

This Ordinance in no way limits, alters, restricts, or waives the Community's sovereign immunity from unconsented suit.

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